

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

Mailed:  
June 14, 2005

Grendel

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Tactica International, Inc.

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Serial No. 76487498

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Mark Harrison of Venable for Tactica International, Inc.

Rebecca L. Gilbert, Trademark Examining Attorney, Law  
Office 113 (Odette Bonnet, Managing Attorney).

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Before Quinn, Chapman and Grendel, Administrative Trademark  
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register  
of the mark SKIN SO SMOOTH (in standard character form) for  
goods identified in the application as "hair removers,  
namely depilatory lotions, creams, waxes, wipes and gels."<sup>1</sup>

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<sup>1</sup> Serial No. 76487498, filed on February 3, 2003. The  
application is based on applicant's allegation of a bona fide  
intent to use the mark in commerce. Trademark Act Section 1(b),  
15 U.S.C. §1051(b). As originally filed, the identification of  
goods in the application included "skin moisturizers," but

The Trademark Examining Attorney has issued a final refusal to register, citing two registrations, both of which are owned by Avon Products, Inc., as bars to registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). The first cited registration is Registration No. 0780479, which is a Supplemental Register registration of the mark SKIN-SO-SOFT (in standard character form) for "bath oil."<sup>2</sup> The second cited registration is Registration No. 1748065, which is a Principal Register registration of the mark SKIN-SO-SOFT (in standard character form) for "bath oil, hand and body lotion, talc, bath and shower gel, and bath oil towelettes."<sup>3</sup> This latter registration is registered pursuant to Trademark Act Section 2(f), 15 U.S.C. §1052(f).

Applicant has appealed the final refusal to register. Applicant and the Trademark Examining Attorney have filed main appeal briefs. Applicant did not file a reply brief, and did not request an oral hearing. We affirm the refusal to register.

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applicant deleted those goods by amendment during prosecution of the application.

<sup>2</sup> Issued November 17, 1964, renewed twice. Section 8 affidavit accepted.

<sup>3</sup> Issued January 26, 1993, renewed. Section 8 affidavit accepted, Section 15 affidavit acknowledged.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We turn first to the first *du Pont* factor, i.e., whether applicant's mark and the cited registered mark are similar or dissimilar when compared in their entirety in terms of appearance, sound, connotation and commercial impression. The test, under the first *du Pont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v.*

*Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entirety, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

In terms of appearance, sound and connotation, we find that applicant's mark, SKIN SO SMOOTH, and the cited registered mark, SKIN-SO-SOFT, are similar to the extent that they both begin with the words SKIN SO. Additionally, we find that the adjectives appearing at the end of the respective marks, i.e., SOFT and SMOOTH, although not identical, have similar connotations. In this regard, we take judicial notice that the dictionary definition of "soft" is, in pertinent part, "smooth or fine to the touch." Webster's II New Riverside University Dictionary (1988) at 1105.<sup>4</sup>

Viewing the marks in their entirety, we find that they present similar rather than dissimilar overall

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<sup>4</sup> The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); TBMP §704.12(a)(2d ed. rev. 2004).

commercial impressions. The hyphens in the cited registered mark contribute little or nothing to that mark's commercial impression, and their presence in the cited registered mark does not serve to distinguish the two marks. The marks are similarly constructed, each beginning with the words SKIN SO and ending with an adjective which describes the effect of the product on the purchaser's skin. Both marks tell purchasers that use of the respective products will make one's "skin so" something, i.e., smooth or soft. As noted above, "soft" and "smooth" are nearly synonyms. We find that the similarity of the marks which results from the fact that both marks begin with the words SKIN SO and end with the similar terms SOFT and SMOOTH outweighs any dissimilarity between the marks which results from the fact that the final descriptive adjective in each mark is not identical. Viewing the marks in their entirety, we find them to be more similar than dissimilar.

We also find that applicant's goods, "hair removers, namely depilatory lotions, creams, waxes, wipes and gels," are sufficiently related to the "bath oil" identified in the cited '479 registration and to the "bath oil, hand and body lotion, talc, bath and shower gel, and bath oil towelettes" identified in the cited '065 registration, that

confusion is likely to result from use of these similar marks on the respective products. The Trademark Examining Attorney has submitted eleven third-party registrations, based on use in commerce, in which the identifications of goods include both applicant's type of goods (e.g., hair removing creams, depilatory creams) and the types of goods identified in the cited registrations (e.g., bath oil, body lotion and shower gel). Although such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

Contrary to applicant's contention, we find that the third-party registrations of record in this case suffice to establish, *prima facie*, the relatedness of the goods at issue here. They show that hair removal products, on the one hand, and bath oils, body lotions, and shower gels, on the other hand, can emanate from a single source under a single mark. Applicant's arguments to the contrary are not persuasive. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009

(Fed. Cir. 1987)(burden on applicant to come forward with evidence to rebut examiner's *prima facie* showing).

Given the similarity of the marks and the relatedness of the goods, we conclude that contemporaneous use of these marks on the respective goods is likely to cause source or other confusion among purchasers. To the extent that any doubt might exist as to the correctness of this conclusion, we resolve such doubt against applicant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

**Decision:** The refusal to register is affirmed.